THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

July 10, 1975

The Honorable Bill McCoy
Ector County Attorney
Room 223, Courthouse
Odessa, Texas 79761

Open Records Decision No. 100

Re: Library circulation records identifying borrowers.

Dear Mr. McCoy:

Pursuant to section 7 of the Open Records Act, article 6252-17a, V. T. C. S., you have requested our decision as to whether information on the identity of persons who have checked out paintings from the Ector County Library is excepted from disclosure under section 3(a)(1) which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

The request from the city editor of the Odessa American asks:

> to look at all records pertaining to the fine art's lending library of art objects. I would like to know who has checked out art prints in the past, who has them checked out at this time, how many persons have paid fines for late returns and the amount of the fines.

We understand your contention to be that only the identity of library patrons is excepted from disclosure, and that you do not object to disclosure of other requested information which does not identify individual patrons.

No Texas statute makes library circulation records or the identity of library patrons confidential, and no judicial decision in this state, nor in other jurisdictions, has declared it confidential. However, we believe that the courts, if squarely faced with the issue, would hold that the First Amendment of the United States Constitution, which is applicable to the

states through the Fourteenth Amendment, Gitlow v. New York, 268 U.S. 652, 666 (1925), makes confidential that information in library circulation records which would disclose the identity of library patrons in connection with the material they have obtained from the library.

The First Amendment "necessarily protects the right to receive" information, Martin v. City of Struthers, 319 U.S. 141, 143 (1943). It protects the anonymity of the author, Talley v. California, 362 U.S. 60 (1960); the anonymity of members of organizations, Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963); Bates v. City of Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama, 357 U.S. 449 (1958); the right to ask persons to join a labor organization without registering to do so, Thomas v. Collins, 323 U.S. 516 (1945), the right to dispense and to receive birth control information in private, Griswold v. Connecticut, 381 U.S. 479 (1965); the right to have controversial mail delivered without written request, Lamont v. Postmaster General, 381 U.S. 301 (1965); the right to go to a meeting without being questioned as to whether you attended or what you said, DeGregory v. Attorney General of New Hampshire, 383 U.S. 825 (1966), the right to give a lecture without being compelled to tell the government what you said, Sweezy v. New Hampshire, 354 U.S. 234 (1957), and the right to view a pornographic film in the privacy of your own home without governmental intrusion, Stanley v. Georgia, 394 U.S. 557 (1969).

In light of these authorities, we believe that the First Amendment guarantee of freedom of speech and press extends to the reader or viewer, and protects against state compelled public disclosure of a persons reading or viewing habits, at least in the absence of a showing of a clear and present danger which threatens an overriding and compelling state interest. Even if such a threat were shown to exist, we do not believe that the Open Records Act provides that "precision of regulation," NAACP v. Button, 371 U.S. 415, 438 (1963) which is required in this area to insure that the least drastic means for achieving a permissible purpose are used. Shelton v. Tucker, 364 U.S. 479, 488 (1960).

If by virtue of the First and Fourteenth Amendment, " a state has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch," Stanley v. Georgia, supra at 565, then neither does the state have any business telling that man's neighbor what book or picture he has checked out of the public library to read or view in the privacy of his home.

Thus, it is our decision that information which would reveal the identity of a library patron in connection with the object of his or her attention is excepted from disclosure by section 3(a)(1) as information deemed confidential by constitutional law.

However, we do not believe that this constitutional protection extends beyond the identification of an individual patron with the object of his or her attention. Thus, we do not believe the fact that a person has used the library, owes or has paid a fine is confidential information.

Very truly yours,

John L. Hill

JOHN L. HILL
Attorney General of Texas

APPROVED:

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C. ROBERT HEATH, Chairman
Opinion Committee